IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2674 OF 2006

A.C.Mehta - Proprietor of Sheetal Enterprises .. Petitioner
V/s
Union of India & Anr. .. Respondents

Mr.B.M.Shaikh for the Petitioner.
Mr.R.Ashokan with Mr.Y.R.Mishra for the Respondents.

CORAM : DR.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATE : 11th January, 2007.

P.C.:

1. Heard the learned Counsel for the parties. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing.

2. By this petition, the Petitioners are challenging five orders with regrd to the refund applications which were rejected by the Assistant Commissioner (Central Excise) Kandivali Division dated 5th October, 2006. It appears that in all the five cases, the Petitioners could not produce the proof of actual exports at the relevant time and under these circumstances, the order in original was adjudicated on 18.12.2002 and was confirmed on 28.03.2003 thereby confirming the duty demand and the penalty aggregating to Rs.28,20,330/-.

3. It appears that against the said order, even the appeals which were filed before the Commissioner

(Appeals) Central Excise were also dismissed on 30.01.2004, and aggrieved thereby the Petitioners had approached this Court by way of a Writ Petition No.2305 of 2005 and this Court by an order dated 13th October, 2005 has dismissed the said Petition and thereby declined to interefere on the ground that the delay in submitting the requisite documents with regard to the proof of export cannot be condoned.

4. Thereafter, the Petitioners have paid the duty demand and penalty amount under protest, and thereafter preferred the applications for refund which came to be rejected. The learned Counsel for the Petitioners has brought to our notice the provisions of Rule 12 of the Central Excise Rules, 1944. The said Rule 12 reads as under:-

> "Rule 12 - Rebate of duty on goods exported -
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> (1) The Central Government may from time to time by notification in the Official Gazette, grant rebate of duty paid on excisable goods, if exported outside India, to such extent, and subject to such safeguards, conditions and limitations as regards the class of goods, destination, mode of transport, and other allied matters as may be specified therein:
>
> Provided that if the Collector is satisfied that the goods have in fact been exported, he may, for reasons to be recorded to in writing, allow the whole or any part of the claim for such rebate even if all or any of the conditions laid down in any notification issued under this rule have not been complied with.
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> Explanation - For the purpose of this rule the term "Collector" includes the Collector of Central Excise at Madras, Bombay, Calcutta and Cochin and the Collector of Central Excise in whose territorial jurisdiction the airport or port of Visakhapatnam,

Kakinada, Jamnagar, Mangalore, Bhavnagar, Veraval, Porbander, Rameswaram, Tuticorin, Kandla, Cuddalore, Okha, Nagapatinam, Pondicherry and Paradip is located.

(2) Where the Central Government does not grant under sub-rule (1) either wholly or partially any rebate of duty paid on excisable goods exported to a country outside India, it may in order to promote exports or fulfil obligations arising out of any treaty entered into between India and the Government of that Country, provide for payment to the Government of that country an amount not exceeding the duty of excise paid on such goods which are exported out of India to that country."

5. The learned Counsel for the Petitioners has submitted that the Rule 12 very clearly provides that if the Collector is satisfied that the goods have in fact been exported, he may, for reasons to be recorced in writing, allow the whole or any part of the claim for such rebate, even if all or any of the conditions laid down in any notification issued under this rule have not been complied with.

6. Therefore, the contention of the learned Counsel for the Petitioners is that even though there was delay in submitting the documents with regard to the proof of export, ultimately, it has now been established that the goods had been exported. Even the perusal of the impugned order clearly indicates that the learned Assistant Commissioner of Central Excise has given a finding that the Petitioners had, in fact, exported the goods.

6. In the light of the above, the impugned order which

proceeds only on the basis of earlier adjudication order, cannot be sustained. The learned Assistant Commissioner ought to have considered the refund applications in the light of the provisions of Rule 12 of the Central Excise Rules. Hence, the impugned order is quashed and set aside and the matter is remanded back to the Assistant Commissioner of Central Excise to consider the refund applications afresh in the light of Rule 12 of the Central Excise Rules.

7. Needless to state that the Assistant Commissioner of Central Excise shall decide the said applications in accordance with law, as expeditiously as possible preferrably within a period of three months from today.

8. Rule is made absolute accordingly, and the Petition stands disposed of.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**